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James E. Ross

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LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
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1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte JAMES E. ROSS and WILLIAM J. LYNCH
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13 Appeal 2007-1587
14 Application 09/901,512
15 Technology Center 3600
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19 Oral Hearing Held: February 20, 2008
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23 Before HUBERT C. LORIN, ANTON W. FETTING, and JOSEPH A.
24 FISCHETTI, Administrative Patent Judges

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26 ON BEHALF OF THE APPELLANT:
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35 The above-entitled matter came on for hearing on Wednesday, February 20,
36 2008, at the U.S. Patent and Trademark Office, 600 Dulany Street,
37 Alexandria, Virginia, before Virginia Johnson, Freestate Reporting, Inc.

P R O C E E D I N G S

JUDGE LORIN: Number 2007-1587. We are familiar with the case -- the issues in the case. When you're ready you may proceed.

MR. JOY: Okay, -- I think that the issues are probably pretty well laid out and the differences between the applicants and the U.S. Patent Office on this, but I just wanted to make sure that if there's any questions regarding the, the interpretation of the claim and, and also the issue of, of traversal of Official Notice that I answered at least your concerns.

I'd like to first begin, I guess, with just briefly describing the invention and, and key parts of, of claim -- the independent claims that I think were not addressed in the Office Actions and in the briefs that followed. In general, I'd, I'd, I'd like to say the that Appellant's recited invention is directed to a patient information access system that supports what we've termed as a variety of grease-board views that then in turn enumerate patient lists that correspond to a set of patient records.

The, the enumerated patient -- the corresponding sets of stored patient information record sets are displayed according to each of these different supported varieties of grease-board views. And, in terms of in the, in the disclosure itself where this is described, there's a, a Figure 2 that identifies what's referred to as a tracking module and that term is in the figures linked to another box that says select display and in that box the identified -- excuse me, a total of six different grease-board views; one is department layout, another one is patients, waiting patients, another one is patient complaints, another one is non-dictated, non-dictated records, outstanding orders is the

1 fifth and the last of the listed ones -- the examples is the latest scribbles.

2 And, in contrast to what we've claimed the, the Collin reference --
3 primary reference kind of which the Office Actions rely on, really shows a
4 single grease-board view and that's the one that's shown in Figure 6-1B and
5 that is the -- of all the, of all the views that is the only one that shows an
6 enumeration of patients corresponding to the patient records.

7 What happens in, in the Collin reference is that it drills down in every
8 subsequent view is based upon a single selected patient record and there's no
9 subsequent listinfs or views that show multiple patients. I guess, and I don't
10 want to just repeat my brief over again or anything like that, but, you know,
11 in summary, I guess, the main point I'd like to raise -- to leave with the art of
12 say Claim 7 and 37 is that each explicitly required displaying for each one of
13 a variety of grease-board views; information for a set of active patient
14 records rather than a patient record for a single patient.

15 The other -- to give specific -- I didn't identify any particular pages of
16 the specification, but portions of the specification that are associated with
17 these claims are at Pages 13 and 14, and at the end 13 and it carries on over
18 to 14 where it mentions active patient list information and various screens
19 that are associated with those different views.

20 And, also with regard to Figure 2, there's a corresponding written
21 description at Pages 15 and 16 of the specification and I actually took a
22 quote from that and it's in the brief itself so I won't reread to you today.

23 Again, with regard to Collin, you know, I, I looked through that whole
24 reference, in fact, and --

25 JUDGE LORIN: Counsel --

26 MR. JOY: -- and so did Dr. Ross, one of the inventors --

1 JUDGE LORIN: Counsel --

2 MR. JOY: And we came --

3 JUDGE LORIN: Counsel, Counsel --

4 MR. JOY: -- to the same conclusion that there's only one view that
5 shows an enumeration of patients and that's Figure 6-1B and there's no
6 disclosure of alternative views showing multiple patient records.

7 JUDGE LORIN: Counsel, we have a question.

8 MR. JOY: Yes.

9 JUDGE FISCHETTI: Mr. Joy, my question is -- this is Judge
10 Fischetti here. I take your attention to Figure 6-1C.

11 MR. JOY: Okay.

12 JUDGE FISCHETTI: And, I see local census and then I also see
13 underneath it, general index and census index. Well, why not consider each
14 of those as a grease-chart, a grease-board view of, of data.

15 MR. JOY: Because the grease-board -- I guess, that might go back to
16 the fact that Dr. Ross, one of the inventors is a doctor, but a grease-board
17 view is in the, in the context of medical world is -- I guess, the one that he,
18 that Dr. Ross, pointed out to me is in the emergency room how you see that,
19 that -- I call them dry-erase boards. That's, that's what a grease-board is.
20 It's a listing of patients and that's what this is about. You know, the claimed
21 invention is about showing an enumeration of patients and their associated
22 information in an electronic form, obviously in this case. There are no
23 listings of patients in Figure 6-1C.

24 JUDGE FISCHETTI: No, I understand that, but those are just
25 macros out-densed for files that they get you into, into sub, sub files and I
26 can't see why a general index wouldn't include a list of patients, right?

1 MR. JOY: But it's what's displayed. Going back to the claim itself,
2 it's the display of, of patient information in multiple ways. The actual view
3 itself enumerates multiple patients. And, that goes back to the actual
4 wording of the claims that you just, you take --it's essentially saying take the
5 information from multiple patient records and display an enumeration of
6 those patients on a screen, and that's what grease-boards are. They're,
7 they're an enumeration of patients.

8 JUDGE FISCHETTI: So, so you basically, you're, relying on a
9 concept and from what was know to be in an actual chart and you're trying
10 to parlay that into a digital concept?

11 MR. JOY: No, I don't think so. I think that what, what's new is the
12 fact that it's the presentation of patient information in different ways and
13 that's where going back to Figure 2 --

14 JUDGE FISCHETTI: Okay.

15 MR. JOY: -- it shows there's multiple views and each one of those
16 looks different. And, I guess the way to think of it is task oriented. You
17 know, a janitor could use this list actually to see, you know, whose room
18 needs to be cleaned, but, but depending on the task that needs to be done,
19 you'd get a department layout showing a list of patients according to their
20 rooms. There's another one that says patient complaints. That would be
21 somewhat -- that would be one that might be used by the nurse. And, and
22 the, the information is rearranged based upon the, the type of cache in this,
23 in the view that you selected.

24 JUDGE FISCHETTI: Okay, so getting back to my initial question,
25 if, if general index allows for a listing of patient names, why then does that
26 not qualify as a grease-board view?

1 MR. JOY: Well, if, if the general index is going to back to, you
2 know, the -- well, I don't believe that's what a general index is. You know,
3 I, I -- today, right now, I, I couldn't tell you exactly. I might, I probably get
4 it wrong, but that's not a link to the patients.

5 JUDGE FISCHETTI: Okay, then how about census index. Then
6 maybe --

7 MR. JOY: Census. The only one that I know of that, that is linked to
8 the patients is the local census. And, that's, that's what's been described in
9 this Collin reference. And, I, I am -- I'll, you know, stand corrected if that's
10 the case, you know, if there's otherwise. But, both Dr. Ross and I have read
11 through this and the local census is the only one that I know of that links to
12 patient records and then displays them.

13 JUDGE FISCHETTI: Alright, thank you.

14 MR. JOY: The only, the only other issue that I want to raise today is
15 the Official Notice. I, I obviously had disagreement, I guess, over what
16 needed to be done. And, you know, beginning first with the fact that, you
17 know, operating the, on my assumption, my understanding that there's only
18 one view being shown in Collin. The Examiner went a step beyond that just
19 to say that, you know, any of these additional views is well known in the art,
20 and in my first Office Action response, I, I specifically asked in traverse to
21 that and asked for references in the, and got no response. Asked for it again,
22 in response to the final and then, you know, for the first time the, the answer
23 raises this objection saying that, you know, I needed more detail or
24 something like that, in order to raise this properly and I guess, you know,
25 looking at it from the point of view -- first, you know, it was a matter of fact,
26 you know, an actual argument is these things just aren't the type of thing that

1 are notoriously well known. And, neither the inventor nor I was aware of,
2 you know, such listings in a prior art and requested, you know, a citation of
3 a reference to support it. Over the years, this Examiner has had multiple
4 opportunities to do it and still hasn't provided a reference. I think it's almost
5 proved itself that this isn't notoriously well known. And, you know,
6 unfortunately it's gotten to this point rather than providing a reference, here
7 we are on appeal years later and I still haven't received any reference.

8 JUDGE FISCHETTI: Would you, would you be in agreement with
9 us that writing information on a grease-board is, is well known.

10 MR. JOY: Absolutely.

11 JUDGE FISCHETTI: Okay, I've got all --

12 MR. JOY: That's what, that's what been done for years. It's, you
13 know, that -- it was on the, on the -- I think we've all seen it on ER, the
14 show for years when they, you know, write people, write them up. They've
15 got the grid. Put names on it. Take them off. But, you know, as far as I
16 know, I've never seen anything like what we've claimed here where you
17 have multiple views presented and if -- I've tried to describe today a task
18 oriented way of doing it based on the task of the user you can provide a
19 different type of view of the listing of patients and their associated records.

20 JUDGE LORIN: Okay, Counsel, are you, are you through with your
21 argument?

22 MR. JOY: Yes, I think I am.

23 JUDGE LORIN: Okay, there are no more questions, here. So, thank
24 you, Counsel, we'll take your comments under advisement.

25 MR. JOY: Okay, thank you.

26 (Whereupon, the proceedings concluded.)